

**BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

Docket No. 2003-326-C

In Re:)
)
Analysis of Continued Availability of)
Unbundled Local Switching for Mass)
Market Customers Pursuant to the Federal)
Communications Commission's Triennial)
Review Order)
_____)

Docket No. 2003-327-C

In Re:)
)
Continued Availability of Unbundled High)
Capacity Loops at Certain Locations and)
Unbundled High Capacity Transport on)
Certain Routes Pursuant to the Federal)
Communication Commission's Triennial)
Review Order)
_____)

**COMPSOUTH'S RESPONSE IN OPPOSITION TO BELL SOUTH'S
MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

On March 17, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed a Motion in the above-captioned matters to hold the proceedings in abeyance until the "present uncertainties" associated with the D.C. Circuit Court of Appeals decision in *U.S.T.A. v. FCC*, Case No. 00-1012, March 2, 2004 ("USTA") can be resolved. The Competitive Carriers of the South, Inc. ("CompSouth")^a opposes BellSouth's Motion and urges the Public Service Commission of South

^a The members of CompSouth include: Access Integrated Networks, Inc., Access Point Inc., AT&T of the Southern States, L.L.C., Birch Telecom of the South, Inc., Cinergy Communications Company, CompTel/Ascent Alliance,

Carolina (“Commission”) to go forward with the procedural schedule and hearings as previously ordered. In support of its opposition to the BellSouth Motion, CompSouth shows the following:

1. On March 8, 2004, the Commission’s General Counsel conducted an informal poll of the parties inquiring whether Docket Nos. 2003-326-C and 2003-327-C should be held in abeyance in view of the *USTA* decision by the U.S. Court of Appeals for the D.C. Circuit. CompSouth responded to the informal poll by submitting Comments dated March 10, 2004. CompSouth stands by those Comments and continues to urge the Commission to complete the procedural schedule for these dockets and to deny the Motion of BellSouth.

2. In its Motion BellSouth expresses concerns over the time and resources of the Commission and the parties, as well as concerns over the significance of any decisions made by the Commission in these proceedings. BellSouth goes further and questions whether the Commission would even be looking at the proper issues. As set forth in CompSouth’s March 10, 2004 Comments, these concerns are either unfounded or are greatly outweighed by other matters.

3. For example, contrary to BellSouth’s assertions concerning the relevancy and usefulness of this Commission’s continued efforts, FCC Commissioner Kevin Martin, the person responsible for crafting the majority opinion in the Triennial Review Order, emphasized the importance of utilizing the policy expertise of state commissions.^b During his remarks before NARUC, quoting Justice Thomas from AT&T v. Iowa Utilities Bd., Commissioner Martin stated that “In 1996, Congress decided to attempt to introduce competition into the market for local

Covad Communications Company, ITC Deltacom Communications, Inc., IDS Telecom, LLC, KMC Telecom III, KMC Telecom V, Inc., LecStar Telecom, Inc., Momentum Business Solutions, Inc., Network Telephone Corp., NewSouth Communications, Corp., Nuvox Communications, Inc., PACE Coalition, Talk America, MCI metro Access Transmission Services, LLC, MCI WORLDCOM Communications, Inc., Xspedius Management Co., LLC, Z-Tel Communications, Inc.

^b Excerpt from speech of FCC Commissioner Kevin Martin to National Association of Regulatory Utility Commissioners, Winter Meeting, March 8, 2004.

telephone service, it deemed it wise to take advantage of the policy expertise that the state commissions have developed in regulating such service.”^c He went on to say “states are competent to be involved in this process” and “they have a unique expertise that we should take advantage of.”^d Underscoring his belief in the importance of the role of state commissions in this endeavor, *Commissioner Martin urged states to “...move forward with your best efforts to gather the critical factual data necessary for whatever lies ahead.”*^e He concluded, “I am confident that, irrespective of the final outcome, *the relevant data and factual information you have and will gather as part of the competitive market analysis will be vital to advancing the cause of local competition in the next phase of the Commission’s process.*”^f

4. In addition, Commissioner Michael Copps stressed the importance of states moving forward in these proceedings in his remarks to the National Association of Regulatory Utility Commissioners (“NARUC”). In his speech, Commissioner Copps stated that “...*it is absolutely vital that the good work of the states continues.* Whatever fact-finding efforts state commissions are engaging in now, I hope you keep to the course. I know that budgets and time are tight, by no one else can amass the absolutely essential information that the states can.”^g Commissioner Copps went on to emphasize that if a stay is not granted, and thus, the D.C. Circuit’s mandate issues, it is the states that will have to “determine if the rules of the road have changed and how.”^h

^c Id.

^d Id.

^e Id.

^f Id.

^g Excerpt from speech of FCC Commissioner Michael J. Copps to National Association of Regulatory Utility Commissioners, Winter Meeting, March 9, 2004.

^h Id.

5. Other states have determined to continue with the proceedings that are currently underway in their jurisdictions. In addition to the New York Public Service Commission, the Public Utility Commission of Texas voted on March 10, 2004 to go ahead with TRO proceedings.ⁱ In addition, the Indiana Utility Regulatory Commission decided to go ahead with its proceedings stating that “[t]he parties and the Commission have already invested significant resources in these TRO proceedings and there remains the possibility that the current issues and directives of the TRO will not change....We believe the most appropriate course of action with respect to the affected proceedings in this state is to not suspend or delay these TRO Causes.”^j

6. BellSouth asserts in support of its request for delay that the instant dockets were established to implement the TRO and that discovery has focused on federal law, not state law. These arguments are without meaning or merit. BellSouth acknowledges the Commission’s authority under SC Code § 58-9-280 (C) and does not even attempt to address the Commission’s authority pursuant to 47 U.S.C.A. § 271 (see CompSouth’s March 10, 2004 Comments, p. 5). There is absolutely no basis in law or policy – state or federal – that would preclude continuing the meaningful work that this Commission has already begun and that at least two FCC commissioners have indicated will be of great value to the FCC, not matter what the final outcome may be.

7. BellSouth asserts in support of its request for delay that a member of CompSouth, ITC^DeltaCom Telecommunications, Inc., “recently took the opposite position in a similar proceeding before this Commission.” BellSouth attempts to mislead this Commission by

ⁱ Texas PUC March 10, 2004 Open Meeting, discussion of "Docket No. 28607, Impairment Analysis for Local Circuit Switching for the Mass Market" (transcript not yet available).

^j In The Matter Of: The Indiana Utility Regulatory Commission's Investigation Of Matters Related To The Federal Communications Commission's Report And Order And Order On Remand And Further Notice Of Proposed Rulemaking In CC Docket Nos. 01-338, 96-98, AND 98-147; Cause Nos. 42500, 42500-S1, 42500-S2.

implying the two dockets are similar. In Docket No. 2004-0049-C, Verizon South, Inc. seeks Arbitration to amend the interconnection agreements between Verizon and certain telecommunications providers. Amending existing agreements between Verizon and other companies is completely different than the subject matter of the TRO dockets. BellSouth's disingenuous argument should be dismissed as not relevant to this motion.

WHEREFORE, based on the foregoing reasons, CompSouth respectfully requests that the Commission deny BellSouth's Motion to Hold Proceedings in Abeyance and continue with the procedural schedules as previously ordered.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: /S/
Robert E. Tyson, Jr.
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
rtyson@sowell.com

Attorneys for Competitive Carriers of the South, Inc.

March 22, 2004

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for CompSouth, do hereby certify that I have served a copy of the pleading(s) hereinbelow listed via e-mail (unless otherwise specified) to the following address(es):

**Pleadings: CompSouth’s Response in Opposition to BellSouth’s Motion to Hold Proceedings in Abeyance
(in Docket Nos. 2003-326-C and 2003-327-C)**

Counsel Served: F. David Butler, Esquire
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211
david.butler@psc.state.sc.us

The Honorable Bruce Duke
Acting Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211
bruce.duke@psc.state.sc.us

Patrick W. Turner, Esquire
BellSouth Telecommunications, Inc.
Post Office Box 752
Columbia, South Carolina 29202
patrick.turner@bellsouth.com

Elliott F. Elam, Jr. Esquire
South Carolina Department of Consumer Affairs
Post Office Box 5757
Columbia, South Carolina 29250-5757
Elam@dca.state.sc.us

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
jbowen@mcnair.net
pfox@mcnair.net

Darra W. Cothran, Esquire
Woodward, Cothran & Herndon
Post Office Box 12399

Columbia, South Carolina 29211
dwcothran@wchl.com
John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
jpringle@ellislawhorne.com

Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, South Carolina 29205
selliott@mindspring.com

Rowland L. Curry
Curry and Associates
1509 Mearns Meadow Boulevard
Austin, Texas 78758
rcurry@austin.rr.com

(via US Mail, no email address)

Robert B. Loube
Director, Economic Research
Rhoads and Sinon, L.L.C.
10601 Cavalier Drive
Silver Spring, Maryland 20901

Edward H. Phillips, Esquire
Sprint Communications Company, LP
Legal Dept. Mailstop: NCWKFR0313
14111 Capital Boulevard
Wake Forest, NC 27587-5900
Phillips@mail.sprint.com

Also e-mail:
daphne.werts@psc.state.sc.us
deborah.easterling@psc.state.sc.us
florence.belser@psc.state.sc.us

/S/

Louanne Horton

March 22, 2004